IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 632 OF 2005

WITH

CIVIL APPLICATION NO. 731 OF 2005

Anirudh K. Tiwari & Anr. .. Petitioners

versus

Municipal Corporation of Gr.
Mumbai & ors. .. Respondents

...

Mr.R.M. Pandey for the petitioner.

Ms.Geeta Joglekar for the respondent no.1.

Mr.R.B. Jain i/b M/s.Legal Juris for the respondent no.2.

Mr.A.C. Tamhane i/b M/s.Tamhane & Co. for the respondent no.3.

CORAM : B.H. MARLLAPALLE,J

DATED : 22nd August 2005.

P.C.:

1. Heard Shri Pandey for the appellants

plaintiffs who have filed L.C. Suit no.6026 of 2004. Notice of Motion no. 5381/04 was taken out in the said suit for temporary injunction and it has been dismissed on 23.03.2005 by the learned Judge of the City Civil Court at Mumbai dismissed the appeal from the said order dated 23rd March 2005.

2. The suit was filed for declaration and permanent injunction against the defendants. The defendant no.1 is a Municipal Corporation, defendant no.2 is the developer and defendant no.3 claims to be the original owner of the suit property. The plaintiffs claim that the suit structure admeasuring 30’ x 50’ of tin wall of C.I. sheet roof situate in plot bearing survey no.464, CTS no.243, Rajanpada, Link Road, Malad (W), Mumbai was produced by them by an agreement dated 29th November 1985 from Mr.Dharamraj Tiwari who happens to be the brother of plaintiff no.1. The plaintiffs could not explain as to how their vendor got the title in the suit property which was allegedly censused and the certificate dated 24th December 1979 was issued in the name of Dharamraj Tiwari. The trial Court therefore referred to the decision of the Supreme Court in the case of Rambhau Gajre vs. Narayan

Bapuji reported in (2005)(92) Bom.C.R. 315, and noted for the prima facie considerations that if the title of Dharamraj Tiwari was doubtful, the plaintiffs were not entitled for protection u/s.53-A of the Transfer of Property Act. In the Notice of Motion, temporary injunction was sought against respondent nos.2 and 3 restraining them from construction of any building on the suit plot by dispossessing the plaintiffs and also against defendant no.1 or their servants from sanctioning the building plan and granting commencement certificate. The reasoning set out by the trial Court cannot be termed as perverse or illegal and therefore this appeal may fail at the threshold.

3. The appeal is hereby dismissed in limine.

4. Civil Application does not survive and is disposed of.

B.H. MARLAPALLE, J